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Municipal Corporations - Zoning - Applicability of Municipal Zoning Laws to State Agencies

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MUNICIPAL CORPORATIONS—ZONING—APPLICABILITY OF MUNICIPAL ZONING LAWS TO STATE AGENCIES—The Supreme Court of Pennsylvania has held that the State Bureau of Correction may not locate one of its facilities in a municipality in disregard of a local zoning ordinance since the state legislature did not clearly intend that the Bureau of Correction should prevail in such a conflict of authority.

City of Pittsburgh v. Commonwealth, 468 Pa. 174, 360 A.2d 607 (1976).

On April 22, 1974, the Bureau of Correction of the Pennsylvania Department of Justice (appellee) entered into a five-year lease with owners of a building located on South Aiken Avenue in Pittsburgh. The property was to be used as a pre-release center for women convicts.[1] On July 9, 1974, appellant City of Pittsburgh filed an action in equity in the Commonwealth Court of Pennsylvania[2] seeking to enjoin the use of the premises as a pre-release center because no certificate of occupancy had been secured from the city,[3] nor had the Governor of Pennsylvania approved the location of the center.[4] The Commonwealth contended it was not subject to the zoning requirements of municipal subdivisions and therefore was not required to obtain a zoning permit.

The commonwealth court issued a preliminary injunction, but upon the Governor's approval of the location of the pre-release center, the court rescinded the injunction.[5] In a subsequent adjudication on the merits, the commonwealth court held that as a matter of Pennsylvania law, state agencies were not subject to the zoning ordinances of municipalities.[6] The Supreme Court of Pennsylvania reversed. It first noted that Commonwealth agencies no longer enjoy

1. PA. STAT. ANN. tit. 61, § 1051 (Purdon Supp. 1977-1978), authorizes the Bureau of Correction to establish, with the approval of the Governor, "such prisoner pre-release centers at such locations throughout the Commonwealth as it may deem necessary to carry out effective prisoner pre-release programs therefrom."

2. Since this suit was a civil proceeding against the Commonwealth, it was properly initiated in the Commonwealth Court of Pennsylvania. PA. STAT. ANN. tit 17, § 211.401 (Purdon Supp. 1977-1978).

3. Occupancy permits are required for, among others things, a new use or a change in the use of land. PITTSBURGH, PA., ZONING ORDINANCE § 3002-3 (1958).

4. *See* note 1 *supra*.

5. 468 Pa. 174, 177 n.2, 360 A.2d 607, 609 n.2 (1976).

6. City of Pittsburgh v. Commonwealth, 20 Pa. Commw. Ct. 226, 341 A.2d 228 (1975).

an absolute exemption from a municipality's zoning requirements.[7] Rather, the court viewed this case as involving a conflict between a local municipality and a government bureau, both agents of the state, both attempting to exercise their legislatively created powers.[8] The conflict in authority was resolved by examining the two enabling acts to determine whether the legislature intended that the power of the Bureau of Correction to locate pre-release centers should override municipal zoning power.[9] There being no explicit language in the agency's enabling act evincing a clear intent to override local zoning ordinances, the state agency was held to be subject to the requirements of the city's zoning regulations.[10]

Justice Eagen, writing for three justices, dissented.[11] He agreed with the majority that the proper method of analysis was to determine whether the legislators intended to grant to the Bureau of Correction the power to locate pre-release centers regardless of local zoning ordinances.[12] The dissenters concluded, however, that the Bureau of Correction's enabling legislation did expressly confer authority to override the local zoning provisions, in language providing for the construction of pre-release centers "at such locations throughout the Commonwealth as it may deem necessary."[13] Justice Eagen believed that once this legislative intent was discerned, the benefactors of the express grant were not subject to the City's zoning

7. 468 Pa. at 178-79, 360 A.2d at 609-10.

8. To support the majority's contention that conflicts such as the one in *City of Pittsburgh* should be resolved solely on the basis of legislative intent, Justice Roberts relied on a New Jersey Supreme Court case, Rutgers State Univ. v. Piluso, 60 N.J. 142, 286 A.2d 697 (1972). *Piluso* involved a conflict between a township zoning ordinance which permitted the construction of dormitories and other housing facilities, provided such facilities did not exceed five hundred units, and a state statute granting the university a high degree of self government. Rutgers was refused a building permit to build three hundred seventy-four units in excess of the statutory maximum. Although the decision was in favor of Rutgers, Justice Hall of the New Jersey Supreme Court held that the true test of immunity in this area is that of legislative intent, giving respect to the particular agency or function involved. According to the *Rutgers* court, although rarely specifically expressed, legislative intent is generally derived from a consideration of many factors, the most obvious ones being the nature and scope of the instrumentality seeking immunity, the type of function or land use involved, the extent of the public interest to be served thereby, the effect local land use regulation would have upon the enterprise concerned, and the impact upon legitimate local interests. *Id.* at 152-53, 286 A.2d at 702.

9. 468 Pa. at 178, 360 A.2d at 609.

10. *Id.* at 185-86, 360 A.2d at 613.

11. Chief Justice Jones and Justice Nix joined in Justice Eagen's dissent.

12. 468 Pa. at 192, 360 A.2d at 617 (dissenting opinion).

13. *See* note 1 and accompanying text *supra*.

restrictions, whether or not there was a conflict between the Bureau's statutory grant of authority and a city's zoning power.[14]

Until recent years, Pennsylvania courts had resolved conflicts between various arms of the state with the premise that absent an explicit statutory provision to the contrary, state agents "higher up" in the state political system were not subject to restraints by lesser governmental bodies.[15] Applying this principle, it was clear that the zoning power of a municipality could not be enforced against the Commonwealth unless the municipality's enabling act so provided. Early court opinions treated such conflicts in authority as mere controversies between local municipalities and the Commonwealth and since the Commonwealth occupied a superior position in the political hierarchy, the Commonwealth prevailed.[16] The *City of Pittsburgh* court emphasized that it was fallacious to rely on artifi-

14. 468 Pa. at 192, 360 A.2d at 617 (dissenting opinion).

15. *See* General State Auth. v. Borough of Moosic, 10 Pa. Commw. Ct. 270, 310 A.2d 91 (1973) (sovereign immunity from zoning ordinances allowed the establishment of a minimum security correctional institution by the Pennsylvania Department of Justice); Township of Lower Allen v. Commonwealth, 10 Pa. Commw. Ct. 272, 310 A.2d 90 (1973) (denying injunction to prevent the building of a trailer camp on property owned by the Commonwealth in an area zoned residential). Other cases have also granted immunity from local zoning ordinances where the service sought to be provided by the public entity was "governmental" rather than "proprietary." *E.g.*, Harward v. Haas, 59 Pa. D. & C. 658 (Dauphin Co. 1947) (Commonwealth not bound by township zoning ordinance, which prevents the operation of a state teachers college). When the political unit was attempting to perform an essential function, that function was deemed "governmental"; where the function was less essential and alternatives existed, the argument for immunity was less compelling and the function was deemed "proprietary." The problem with this distinction was that the balancing of competing public and private interests which should determine questions of governmental immunity was abandoned in favor of a convenient mechanical application of labels. *See* General State Auth. v. Borough of Moosic, 10 Pa. Commw. Ct. 270, 310 A.2d 91 (1973). Further, it is often difficult to determine whether a function is "governmental" or "proprietary." *Compare* Pruett v. Dayton, 39 Del. Ch. 537, 168 A.2d 543 (1961) (garbage disposal "governmental"), *with* O'Brien v. Town of Greenburgh, 239 App. Div. 555, 268 N.Y.S. 173 (1933), *aff'd*, 266 N.Y. 582, 195 N.E. 210 (1935) (garbage disposal "proprietary").

Other courts have reasoned that where a state agency or authority has the power of eminent domain, the exercise of that power renders the agency or authority immune from zoning regulations, since the uninhibited right of the agency or authority to condemn property must not be limited by zoning laws. *See* Askew v. Kopp, 330 S.W.2d 882 (Mo. 1960) (city desiring to construct a sewage disposal plant used power of eminent domain to override county zoning ordinance). However, zoning ordinances limit, but do not eliminate, the power of a governmental authority to locate its facility. Often the authority can obtain a variance or can locate in an area which is zoned to meet its needs. *See generally* Comment, *Governmental Immunity from Local Zoning Ordinances*, 84 HARV. L. REV. 869 (1971); Comment, *The Inapplicability of Municipal Zoning Ordinances to Governmental Land Uses*, 19 SYRACUSE L. REV. 698 (1968).

16. *See* note 15 and accompanying text *supra*.

cial labels such as the governmental-proprietary distinction[17] in rationalizing this exemption of government agencies from local zoning ordinances. Both the majority and dissenting justices agreed that local municipalities, like state agencies and various state authorities, are agents of the Commonwealth. They reasoned that to resolve the conflict in favor of the authority simply because it is exercising its power as a "state agency" begs the question of which state-created authority should prevail.

The court concluded that the act authorizing the establishment of the pre-release center lacked explicit zoning exemption language, and that the Bureau's enabling act gave only general authorization for the establishment of pre-release centers without providing for specific site selection.[18] As a result, the court found that the legislature had not intended to exempt the Bureau of Correction from the City's zoning regulations.[19] Justice Roberts supported his decision in favor of the City by applying a canon of statutory construction which provides that whenever local zoning regulations impose stricter standards than are required in any other seemingly conflicting statute, the provisions of the local zoning law shall prevail.[20] He determined that the City's zoning ordinance set more stringent standards than did the statute relied upon by the Bureau of Corrections for the regulation of land and building use.

In *Wilkinsburg-Penn Joint Water Authority v. Churchill,*[21] a case relied on by the *City of Pittsburgh* majority, the Pennsylvania Supreme Court considered whether a joint water authority was immune from a borough's zoning power. As in *City of Pittsburgh*, the supreme court in *Wilkinsburg* examined the appropriate zoning enabling act,[22] compared it with the statutory grant of authority to

17. 468 Pa. at 178-79 n.4, 360 A.2d at 609 n.4. *See* note 15 and accompanying text *supra.*

18. 468 Pa. at 183-84, 360 A.2d at 612.

19. The section of the second class city zoning law entitled, "Regulating Use of Land and Buildings" provides:

> For the purpose of promoting health, safety, morals or the general welfare of the community, cities of the second class are hereby empowered to regulate, restrict or determine, the height, number of stories and size of buildings and other structures, . . . the density of population, and the location, use and occupancy of buildings, structures and land for trade, industry, residence or other purposes.

PA. STAT. ANN. tit. 53, § 25051 (Purdon 1957).

20. *Id.* § 25058.

21. 417 Pa. 93, 207 A.2d 905 (1965).

22. *See* 417 Pa. at 96 n.3, 207 A.2d at 907 n.3.

the water authority,[23] and held that as a matter of law the property owned by the water authority was not immune from the zoning power of the borough. The water authority contended that the Municipal Authorities Act, which gave the agency the exclusive power to determine the scope of its services, necessarily implied that property owned by the governmental entity was exempt from local zoning regulations.[24] The court reasoned that the borough was not "determining" the authority's services by enforcing the zoning laws since the initial service decisions remained with the water authority; the word "exclusively" used in the Municipal Authorities Act was not meant to vest unregulated discretion in that administrative body, but was simply intended to make it clear that the water authority, not some other agency, was to determine the necessary services.[25] The borough code, on the other hand, established a comprehensive plan designed to provide for, among other things, an adequate water supply for borough residents. The court found this provision to be more comprehensive than the Municipal Authorities Act,[26] and concluded that the objectives of both statutes could be

23. The provisions relied upon by the authority grant it the power "to determine by itself exclusively the services and improvements required to provide adequate, safe and reasonable service, including extensions thereof, in the areas served . . . ." PA. STAT. ANN. tit. 53, § 306 B(h) (Purdon Supp. 1177-1978).

24. The plaintiff planned to construct a five hundred thousand gallon water tank in the borough but was denied a permit and a variance. Claiming a need for a water tank on the land, the water authority sought judicial relief. The Supreme Court of Pennsylvania held that the propriety of the location of the water tank was not at issue. The parties "have only the power and authority granted them by enabling statutory legislation." 417 Pa. 93, 100, 207 A.2d 905, 909 (1965), *citing* White Oak Borough Auth. Appeal, 372 Pa. 424, 93 A.2d 437 (1953). In examining the Borough Code, Justice Cohen observed that nowhere in the Code was the property owned by a water authority expressly exempted and that, unless an exception is provided by an inference either from the Borough Code, the Municipal Authorities Act or other legislation, the water authority's property is subject to the jurisdiction of the borough's zoning laws. 417 Pa. at 100, 207 A.2d at 909.

25. *See* note 23 and accompanying text *supra*.

26. 417 Pa. at 101, 207 A.2d at 909. This reasoning is misleading. The interpretation was first enunciated in Yezioro v. North Fayette County Mun. Auth., 193 Pa. Super. Ct. 271, 164 A.2d 129 (1960), where the issue was whether a common pleas court had the power to review a municipal water authority's determination of the adequacy and reasonableness of water service to the residents of a township. The authority argued that since the Municipal Authorities Act gave it the power exclusively to determine its services, the common pleas court was without authority to review its determination. The Superior Court of Pennsylvania held that by use of the words "by itself exclusively," the legislature intended to make it clear that the authority, and not some other instrumentality, controlled the initial determination of its services. Like all other determinations of fact, however, the adequacy of the water authority's decision was a matter for judicial scrutiny. *Id.* at 285, 164 A.2d at 137. Given a statute granting a municipal authority the power to "determine by itself exclusively" the location of its services, the *Yezioro* case implies that the authority's decision is limited only in that it is

secured only if the authority's land was subject to the borough's zoning power.[27]

The *City of Pittsburgh* court used the *Wilkinsburg* case as supportive of the proposition that cases involving conflicting powers of public bodies should be resolved by balancing each authority's enabling legislation and applying canons of statutory construction. More importantly, Justice Roberts adopted from *Wilkinsburg* the somewhat limited interpretation of "as it may deem necessary" and used it to counter the Commonwealth's claim that the phrase "as it may deem necessary" in the Bureau of Correction's enabling legislation gave it the power to determine the location of its facilities without regard for the city's zoning regulations.

Like *Wilkinsburg, Pemberton Appeal*[28] was decided solely on an examination of the pertinent enabling statutes and also was considered by the *City of Pittsburgh* court. In *Pemberton,* the Pennsylvania Supreme Court held that the statutory grant of authority to a school district[29] unequivocally vested power in the school board to determine the location of a new school. In the court's view, the zoning act evidenced no overriding intent by the legislature to give townships the general power to enact zoning regulations affecting schools.[30] Allowing a township to prevent a school board from building a school at a desired location would discount the express lan-

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subject to the court's review. There is no indication that the authority's decision is subject to the restriction of zoning regulations or other non-judicial declarations.

27. The Municipal Authorities Act and the borough's zoning power have the same general objectives: to promote the health, safety and welfare of the people. The Municipal Authorities Act provides that "[t]he purpose and intent of this act [is] to benefit the people of the Commonwealth, by . . . increasing their commerce, health, safety and prosperity . . . . PA. STAT. ANN. tit. 53, § 306(A) (Purdon Supp. 1977-1978). Similarly, the Borough Code provided that "[s]uch regulations shall be made in accordance with a comprehensive plan . . . to promote health and the general welfare . . . . PA. STAT. ANN. tit. 53 § 48203 (Purdon 1966) (repealed by PA. STAT. ANN. tit. 53, § 11201 (Purdon Supp. 1977-1978)). *See id.* § 10105 (purpose of Pennsylvania Municipalities Planning Code).

The Municipal Authorities Act, on the other hand, states that the authority must provide "adequate, safe and reasonable service." PA. STAT. ANN. tit. 53, § 306B(h) (Purdon Supp. 1977-1978). In the *Wilkinsburg* court's view, this did not require the authority to make its service determination with due regard to the comprehensive objectives of zoning, even if it had the ability to do so. 417 Pa. at 103, 207 A.2d at 910.

28. *Id.* at 163, 207 A.2d at 910.

29. 434 Pa. 249, 252 A.2d 597 (1969).

30. The language of the Public School Code provides in part: "The location and amount of any real estate required by any school district for school purposes shall be determined by the board of school directors of such district." PA. STAT. ANN. tit. 24, § 7-702 (Purdon 1962).

guage of the Public School Code.[31] Significantly, the *Pemberton* court, in support of its decision for the school board, relied on a canon of statutory construction: where two statutory provisions are irreconcilable, a general provision in a statute shall yield to a conflicting provision in the same or another law.[32] Since the court determined that the township's power to regulate was general, and the power of the school district to choose the location of schools was specific,[33] the school district's grant of authority had priority over the borough's regulatory powers.

Although the *Wilkinsburg* and *Pemberton* cases both provided the supreme court with a method of analysis, neither decision ordered the outcome of the *City of Pittsburgh* case. The statute relied upon by the water authority in *Wilkinsburg* gave the agency the power to determine the services and improvements necessary to provide adequate services,[34] but said nothing of its ability to determine the exact location of those services and improvements. The relevant zoning enabling act in *Wilkinsburg*, on the other hand, empowered the borough to regulate and restrict the construction or use of the buildings and provided no exceptions for governmental agencies.[35] Both statutes could be given full effect only by subjecting the water authority to the borough's zoning enabling law. In *Pemberton,* the Pennsylvania General Assembly expressly provided that the location of any school real estate was a matter strictly reserved to the local school district;[36] any attempted intervention by a local borough or township would be ineffectual.[37]

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31. *See* 434 Pa. at 252-56, 252 A.2d at 599-600.

32. *Id.* at 254, 252 A.2d at 599.

33. *Id.* at 253, 252 A.2d at 599.

34. *See* PA. STAT. ANN. tit. 53, § 306B(h) (Purdon Supp. 1977-1978).

35. *See* note 21 and accompanying text *supra.*

36. "The location and amount of any real estate required by any school district for school purposes shall be determined by the board of school directors of such district . . . ." PA. STAT. ANN. tit. 24, § 7-702 (Purdon 1962).

37. The township seeking to enforce its zoning laws rested its case on School Dist. of Phila. v. Zoning Bd. of Adjustment, 417 Pa. 277, 207 A.2d 864 (1965), which held that a school district must comply with a first class city's off-street parking regulations. It was apparent to the *Pemberton* court that the city's parking regulations had no effect on the school district's statutory power to determine the location of its schools. After distinguishing the *Philadelphia* case, the *Pemberton* court was faced with a statute which could not have been more explicit in its delegation of power to the school district to determine the location of its schools. The decision in favor of the school district was a necessary one since the location of schools is uniquely a matter of school district concern. 434 Pa. at 256, 252 A.2d at 600.

In contrast, the statute in *City of Pittsburgh*[38] fell somewhere between the express legislative grant of immunity to the school district in *Pemberton* and the judicially construed supremacy of the borough zoning law in *Wilkinsburg*. The statute in *City of Pittsburgh* gave the Bureau of Correction the power to establish pre-release centers "at such locations throughout the Commonwealth as it may deem necessary to carry out effective prisoner pre-release programs therefrom."[39] The court was uncertain whether "as it may deem necessary" was meant to be read with the preceding language, suggesting an intent to override local zoning ordinances, or whether that phrase was to be read in conjunction with language following, "to carry out effective prisoner pre-release programs therefrom," which arguably expresses no such intent. If the latter approach was correct, the canon of construction favoring the more specific statute could be applied, the more specific statute being the zoning law which expressly provided that the city must plan and supervise the comprehensive development of its land.[40] The court concluded that the phrase "as it may deem necessary" was probably inserted to make it clear that the Bureau of Correction, and not some other arm of the Commonwealth, would select the sites for the prisoner pre-release centers.[41] The statute therefore stood as a general grant of authority to establish pre-release centers at various locations throughout the Commonwealth, but subject to the exclusion of local zoning ordinances.

The court's construction of the phrase "as it may deem necessary" may have been incorrect. As was discussed earlier,[42] statutes containing that phrase have been interpreted to mean that munici-

38. *See* note 1 *supra*.

39. *Id.*

40. *See* PA. STAT. ANN. tit. 53, § 25058 (Purdon 1957).

41. 468 Pa. at 183 n.7, 360 A.2d at 612 n.7. In other grants of authority, the state legislature has said exactly where certain state institutions were to be built. *E.g.*, PA. STAT. ANN. tit. 61, § 912 (Purdon Supp. 1977-1978) (Correctional Diagnostic and Classification Center must be located at state institution); *id.* § 545-1 (Pennsylvania Department of Welfare expressly instructed to select a tract of land to be purchased by the Department of Property and Supplies or by the General State Authority, to be used as an industrial school for prisoners); *id.* § 732 (location of meeting place for advisory board for prison industrial farms and workhouses to be determined by respective county commissioners); PA. STAT. ANN. tit. 71, § 1519.32 (Purdon 1962) (Pennsylvania Department of Property and Supplies entrusted with the task of determining desirable sights for institutions for the care of persons afflicted with mental disorders).

42. *See* note 26 and accompanying text *supra*.

pal authorities having power to determine the location of services could do so subject only to judicial scrutiny, not to the requirements of local zoning ordinances. The *City of Pittsburgh* court ignored this existing case law and further limited the power of a state agency by declaring that its power to locate is subject not only to judicial review but to local zoning regulations as well.[43]

In reaching this conclusion, the *City of Pittsburgh* court was less than clear in its method of analysis. The court seemed eager to adopt the rule of law that, absent statutory language evincing a clear intent to override local zoning regulations, state agencies and authorities must abide by local zoning laws.[44] Arguably, in doing so, the court lost sight of the real issue before it. The Bureau of Correction claimed a right of authority based on a statute; the issue was whether that statute did, in fact, indicate an intent to override the zoning regulation.

It is obvious from a reading of the majority and dissenting opinions that there were two plausible interpretations of the Bureau of Correction's enabling statute. Justice Roberts apparently conceded this fact and stated that he would look to the intent of the legislature, the purpose for which the statute was enacted, and the circumstances of the particular case to determine which statutory power must prevail.[45] The court was expected to apply these three factors and balance the comprehensive interests of a city's need to provide for the health, safety, and welfare of its residents through zoning ordinances, against the Bureau's need to place institutions where most needed. The majority, however, seemed to limit its analysis to a literal interpretation of the conflicting statutory directives and a general application of canons of construction.[46] Conceivably, had the court weighed the policy considerations and determined legislative intent as it purported to do it might have reached a different result.

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43. 468 Pa. at 183 n.7, 360 A.2d at 612 n.7.

44. *Id.* at 184-85, 360 A.2d at 613.

45. The court observed:

> When there is an apparent conflict in the use of such powers we must look to the intent of the Legislature to determine which exercise of authority is to prevail. . . . [W]e must examine the nature of the legislative grant, the purpose for which it was created, and the facts of the individual case to determine which statutory power must prevail.

Id. at 182, 360 A.2d at 612. This process of balancing statutory purposes gives the greatest deference to enactments of state legislatures. *See id.* at 182 n.6., 360 A.2d at 612 n.6.

46. *See id.* at 186, 360 A.2d at 614.

Justice Roberts could find no legislative history[47] to indicate how conflicts with local zoning regulations were to be resolved. It does not follow, however, that the absence of legislative history left the court without guidance.[48] Justice Eagen, in his dissent, discussed the policy reasons which the legislature might have considered in passing the act creating the Bureau of Correction. In his opinion, the purpose of the statute was to ensure that effective prisoner pre-release programs would be implemented.[49] Crucial in the success of pre-release programs is the environment in which rehabilitation is fostered. The choice of the location most conducive to this rehabilitation should therefore rest with the Bureau of Correction, according to Justice Eagen, since it possessed the necessary expertise to make the determination. For the legislature to have intended the Bureau of Correction to determine its services and at the same time be subject to zoning ordinances would, in effect, deprive the Bureau of a most effective weapon in rehabilitating its prisoners.

The effect of the *City of Pittsburgh* decision seems clear. Unless a Commonwealth bureau or agency is acting under a statute similar to the school code in *Pemberton,* in which the legislature expressly states that the agency's power to locate shall not be limited, it will, in all cases, be subject to local zoning laws. This may prove to be an unfortunate result. Many enabling statutes, passed prior to *Wilkinsburg*, in a time when governmental immunity from local zoning regulations was a law in Pennsylvania,[50] do not clearly evidence a legislative intent that the agency be beyond the control of local zoning laws. In these instances, legislative intent may now be frustrated by the *City of Pittsburgh* precedent.

The legislature, of course, could eliminate the confusion by amending existing statutes and more carefully drafting future bills. If the Pennsylvania legislature indeed did decide that correctional and other special interest agencies should not be subject to the requirements of local zoning laws, *City of Pittsburgh* will require the

47. The act giving the Bureau of Correction its authority was introduced in the Pennsylvania Senate. The Pennsylvania Legislative Journal did not publish debates on this bill. *See* PA. LEGIS. J., 152d Sess. 1453 (1968) (Senate).

48. *See id; cf.* 360 A.2d at 616 (Eagen, J., dissenting).

49. *Id.* Justice Eagen believed that the statute relied upon by the Bureau of Correction expressly granted it the power to override local zoning laws. 360 A.2d at 616 (dissenting opinion).

50. *See* note 15 and accompanying text *supra.*

General Assembly to return to those statutes and express that intent in more explicit terms.

This solution may not be feasible in all cases, however. Legislators may find it politically inexpedient to support zoning enabling legislation which makes it clear to local municipalities that state agencies and authorities can override their zoning laws. Legislators who support such laws may fear loss of support since their constituents might not readily accept such reinforcement of the state legislature's authority over matters affecting local government; legislation giving the state the exclusive power to determine the location of prisons, rehabilitation centers, and other unattractive facilities is bound to create public opposition. State legislators, aware of the need to accord such authority to state agencies and authorities, therefore may be unwilling to assume the responsibility for such legislation, and may therefore enact ambiguously worded legislation which does not readily lend itself to canons of construction. When such a possibility exists, courts should be cognizant not only of precise statutory language and application of these canons, but also should include in their analysis an examination of the purpose for which the conflicting statutes were enacted and the circumstances of the case before it. Only in this manner can cases such as *City of Pittsburgh,* where state penal interests and the strong local interest in a secure living environment collide, be satisfactorily resolved.

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